

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.Nos.1581 of 2014 and 1964 of 2013
& M.P.Nos.1 of 2014 & 1 of 2013

W.A.Nos.1581 of 2014

- 1.State of Tamil Nadu, rep., by
the Secretary to Government,
Department of Tourism and Culture,
Fort St. George, Chennai-9.
 - 2.The Commissioner of Tourism,
Government of Tamil Nadu,
Chennai-600 002.
- ... Appellants

Vs.

- 1.K.Elangovan, S/o Late T.V.Kanagasabai,
Tourist Officer, Tourist Office,
Thanjavur-613 001.
 - 2.M.Mahakrishnan,
Managing Trustee,
Education Siddha & Handicraft Training
Trust (ESHT), Vallalar Street,
Tharangambadi, Pin.609 313.
Nagapattinam District.
 - 3.M.A.Syed Mohamed, Proprietor,
FNR Security Centre & MAS,
All Service Centre, 4/64, Rajaji Street,
Akkur-609 301, Nagapattinam District.
 - 4.G.Kamarajan, Publication Officer,
Office of the Commissioner of Tourism,
Chennai. Full Additional Charge of the
post of Assistant Director.
 - 5.A.Venugopal, Tourist Officer,
Mamallapuram, Additional in-charge of the
post of Assistant Director in the Office of
the Commissioner of Tourism, Chennai.
- ... Respondents

W.A.No.1964 of 2013

- 1.G.Kamarajan, Publication Officer,
Office of the Commissioner of Tourism,
Chennai. Full Additional Charge of the
post of Assistant Director.
- 2.A.Venugopal, Tourist Officer,
Mamallapuram, Additional in-charge of the
post of Assistant Director in the Office of
the Commissioner of Tourism, Chennai.

... Appellants

Vs.

- 1.K.Elangovan,
Tourist Officer, Poombukar,
Thanjavur.
- 2.The State of Tamil Nadu, rep., by
the Secretary to Government,
Department of Tourism and Culture,
Fort St. George, Chennai-9.
- 3.The Commissioner of Tourism,
Government of Tamil Nadu,
Chennai-600 002.
- 4.M.Mahakrishnan, Managing Trustee,
Education Siddha & Handicraft Training
Trust (ESHT), Vallalar Street,
Tharangambadi, Pin.609 313.
Nagapattinam District.
- 5.M.A.Syed Mohamed, Proprietor,
FNR Security Centre & MAS,
All Service Centre, 4/64, Rajaji Street,
Akkur-609 301, Nagapattinam District.

... Respondents

Writ Appeals are preferred under Clause 15 of the Letters Patent against the order dated 01.07.2013 made in W.P.No.17977 of 2009.

W.P.No.17977 of 2009:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records relating to the proceedings in G.O (2D) No. 49 Tourism and Culture(T2) Department dated 28-05-2007 on the file of the first respondent and quash the same as null and void and pass further order.

For Appellants : Mrs.Thangavadhana Balakrishnan,
in WA.1581/2014 Addl. Government Pleader
& Respondents 2 &
3 in WA.1964/2013

For first respondent : Mr.M.Ravi for R1
in both appeals

For respondents 4 : M/s Kavitha Deenadayalan
& R5

For Resondents 2 & 3 : No appearance
in WA.1581/2014 &
R4 & R5 in WA.1962/2013

COMMON JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH, J.)

Considering the commonality of the issue involved, these writ appeals have been taken up together and a common judgment is passed.

2. W.A.No.1581 of 2014 has been filed by the appellants, who are the respondents in the writ petition. W.A.No.1964 of 2013 has been filed strangely by the third parties, whose rights are likely to be affected in the event of the order passed by the learned single Judge being confirmed.

3. The charges against the first respondent/writ petitioner in W.A.No.1581 of 2014 are to the effect that he did not conduct an enquiry on a complaint given by one Mahakrishnan to the effect that salary for four Security Guards was received as against the availability of only two. Since the said Mahakrishnan withdrew the complaint, the enquiry was accordingly closed. A subsequent Enquiry Officer appointed in the place of the first respondent/writ petitioner found that there were only two Security Guards. Therefore, the Enquiry Officer held that the charges were proved, which were confirmed by the Appellate Authority viz., first appellant in W.A.No.1581 of 2014. The learned single Judge has allowed the writ petition holding that after closing of the enquiry, the disciplinary Authority viz., the second appellant ought to have directed the first respondent/writ petitioner to proceed further.

4. The learned counsel appearing for the appellants would submit that the findings rendered in the second enquiry after the earlier one was closed by the first respondent/writ petitioner would show dereliction of duty. The mere fact that

the complaint was withdrawn cannot be a ground to close the enquiry. Therefore, the order of the learned single Judge would require interference.

5. The learned counsel appearing for the first respondent/writ petitioner would submit that in a departmental enquiry, it is for the department to substantiate the charges. There is absolutely no evidence to show that the first respondent/writ petitioner was negligent in discharging his duties. The order passed by the first appellant does not contain any reason. Therefore, no interference is required.

6. The first respondent/writ petitioner was working as Tourist Officer. The charges as discussed above are with respect to the enquiry conducted by him. Admittedly, the complainant withdrew his complaint. In a departmental proceedings, it is for the department to substantiate the charges against the delinquent officer. A Report of an Enquiry Officer is nothing but a piece of evidence to be appreciated by the Disciplinary Authority. It is not as if the first respondent/writ petitioner gave a clinching evidence. If he had closed the enquiry based upon a letter, which was addressed to the appellants, nothing prevented them from asking the first respondent/writ petitioner to proceed further, which was not done. It is only by way of an afterthought, subsequent Enquiry Officer was appointed.

7. We have perused the order of the first appellant, by which, the punishment has been imposed. Certainly, the order has got civil consequence. Therefore, the first appellant ought to have passed an order after considering the report of the Enquiry Officer vis-a-vis explanation given by the first respondent/writ petitioner, which has not been done. The first appellant has accepted the Enquiry Officer's Report as a gospel truth, imposed punishment. Perhaps, it may be a case for remand. However, we are not inclined to do so as the issue is relating to the year 2003. We are in the year 2018. The learned single Judge has also allowed the writ petition after going through the records. Therefore, we are not inclined to undertake the said exercise at this point of time. Accordingly, the writ appeal in W.A.No.1581 of 2014 fails and the same is dismissed. No costs.

8. W.A.No.1964 of 2013 has been filed by the private respondents, who held the position which would have been conferred on the first respondent/writ petitioner but for the order of punishment. Since the subject matter of the writ petition is the order of punishment, the first respondent/writ petitioner ought not to have impleaded the appellants in W.A.No.1964 of 2013. These appellants are not entitled to challenge the order of the learned single Judge. They in fact

worked in their respective posts, which they were holding consequent to the punishment imposed on the first respondent/writ petitioner. After doing so, they also reached the age of superannuation. Therefore, they cannot be denied the benefits for serving in the aforesaid posts, which is inclusive of retiral benefits. In other words, they are entitled for the salary and the computation of pension on that basis, as if, they have been appointed regularly in the posts held by them due to the punishment imposed on the first respondent/writ petitioner. After all, they did render their services and they did not ask for the posts. Now they have also reached the age of superannuation. Hence, the appellants in W.A.No.1581 of 2014 are directed to compute the benefits due to the appellants in W.A.No.1964 of 2013 by taking into consideration the position held by them, which they got due to the punishment imposed on the first respondent/writ petitioner and thereafter continued till the date of attaining superannuation. The needful exercise will have to be done by the appellant in W.A.No.1581 of 2014 within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, W.A.No.1964 of 2013 is disposed of. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Tourism and Culture,
Fort St. George, Chennai-9.

2. The Commissioner of Tourism,
Government of Tamil Nadu,
Chennai-600 002.

+2 Ccs to Mr.M.Ravi, Advocate sr 80194.

+1 CC to Mr.Kavitha Deenadayalan, Advocate sr 80644.

+1 CC to Govt. Pleader sr 80474

W.A.Nos.1581 of 2014 &
1964 of 2013

RSR(CO)
SP(29/11/2018)